



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF U-A-K-U-

DATE: JUNE 5, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a chemical process engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief and asserts that she is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the

---

<sup>1</sup> In announcing this framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>3</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner states that she plans to pursue research and development work in the shale gas industry relating to "the use of mineral oil for fracturing formations." She contends that she will "fully explore the use of mineral oil as base fluid for preparing fracturing fluids after BTEX<sup>4</sup> content has been reduced to acceptable amounts in spent mineral oil and propose this innovative method to the United States shale oil and shale gas industry." The record includes a letter of support from [REDACTED] professor and chair of the Department of Chemical and Natural Gas Engineering at [REDACTED] stating: "With the anticipated success of replacing water with mineral oil in fracking operations as a result of this research subject, the U.S. shale industry would be set to harness the abundant resources of shale oil and gas, especially in formations containing large amounts of clay which could otherwise collapse if water is used as a base fluid for fracturing." To the extent that the Petitioner proposes to perform research regarding improved techniques and processes in this industry, we find that the record supports the Director's determination that she meets the first prong of the *Dhanasar* framework.

### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications. Prior to her graduate studies at [REDACTED] (June 2014 – May 2016), the Petitioner indicates she was employed as a process engineer in Nigeria at the [REDACTED] project (October 2013 - May 2014), [REDACTED] (July 2012 -

<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> The Petitioner received a master of science degree in natural gas engineering from [REDACTED] in May 2016. On appeal, the Petitioner contends that she also meets the regulatory criteria for individuals of exceptional ability set forth at 8 C.F.R. § 204.5(k)(3)(ii). However, as the Petitioner already qualifies for the underlying classification as a member of the professions holding an advanced degree, we need not consider her eligibility as an individual of exceptional ability.

<sup>4</sup> This acronym refers to the chemical compounds Benzene, Toluene, Ethylbenzene, and Xylene.

September 2013), and [REDACTED] (July 2007 - August 2012). At the time of filing, the Petitioner was working as a Technology, Innovation, and Manufacturing (TIM) Engineer for [REDACTED] ice cream, a wholly owned subsidiary of [REDACTED]

The Petitioner submitted documentation of her conference presentations, graduate research project, training certifications, academic records, employment verifications, job opportunity emails from prospective employers, and associate membership in the [REDACTED]. She also offered reference letters discussing her work experience and research projects.<sup>6</sup> The Petitioner maintains that her qualifications, past achievements, commitment to her work, and professional and academic abilities render her well positioned to advance her endeavor.

With respect to her past fracturing operations research in the shale industry, the Petitioner asserts that while she has not had sufficient time to publish her results, she has presented her work at international conferences. In letters supporting the petition, several professors mentioned the Petitioner's research aimed at removing BTEX from spent mineral oil and improving practices in the oil and gas industry. For example, [REDACTED] explained that the Petitioner investigated various processes capable of reducing BTEX compounds to non-detectable limits as specified by the U.S. Environmental Protection Agency (EPA).<sup>7</sup> He asserted that the Petitioner found that the extractive distillation process was "the most suitable and cost-effective" method. Similarly, the Petitioner's former professors at the [REDACTED] in Nigeria, [REDACTED] and [REDACTED] both noted that she investigated the use of mineral oil as a substitute for water in fracturing operations and proposed recycling of the spent mineral oil once the BTEX level was reduced to meet EPA standards.

In addition, [REDACTED] discussed the Petitioner's undergraduate research in which she investigated the effectiveness of liquefied petroleum gas and compressed natural gas as alternatives to petroleum with respect to Nigeria's energy supply. He also mentioned technical papers the Petitioner wrote concerning the effects of natural gas on the environment. While [REDACTED] indicated that the Petitioner proposed ways to help mitigate gas flaring in the African continent, he did not offer specific examples of how her findings have generated positive interest among relevant parties, have affected practices in the industry, or otherwise reflect a record of success in her area of research.

---

<sup>5</sup> The Petitioner's initial submission included an August 2016 letter confirming her acceptance of [REDACTED] job offer for the role of TIM Engineer. In response to the Director's first request for evidence, she provided her [REDACTED] TIM Engineer job description which states: "This TIM Engineering role is essentially responsible for being the subject matter expert on all [REDACTED] equipment processes and specifically owns equipment set-up and process capability for new product launches. Additionally, this Engineer will act as technical coach and resource for the site operations teams . . . ." We note that this recent acceptance of employment with [REDACTED] ice cream is not consistent with the Petitioner's proposal to conduct fracturing operations research in the U.S. shale industry. Regardless, for the reasons discussed in this decision, we do not find her well positioned to advance her research endeavor.

<sup>6</sup> We discuss only a sampling of these letters, but have reviewed and considered each one.

<sup>7</sup> The record includes a June 2015 research project proposal by [REDACTED] entitled [REDACTED] but the Petitioner is not identified in the proposal and there is no documentary evidence indicating that she collaborated with [REDACTED] on this project.

██████████, senior vice president for student affairs at ██████████ stated that the Petitioner presented a poster entitled ██████████ "A new era of oil spill cleanup" at the university's 6th ██████████ ██████████ asserted that the Petitioner's "methodology was sound and her inferences were incisive" and that she "has a profound understanding of the oil and gas industry as a whole."

The record demonstrates that the Petitioner has conducted and presented research as part of her graduate and undergraduate studies. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his or her proposed research. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner has not shown that her research has been frequently cited by others or otherwise served as an impetus for progress in the field, that it has affected the oil and gas industry, or that it has generated substantial positive discourse in the broader academic community. Nor does the evidence otherwise demonstrate that her work otherwise constitutes a record of success or progress in her area of research.

In sum, the Petitioner has not demonstrated a record of success or progress in her field, or a degree of interest in her work from relevant parties, that rises to the level of rendering her well positioned to advance her proposed endeavor of performing fracturing operations research aimed at improving practices in the oil and gas industry. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework. Accordingly, we affirm the Director's determination on this issue.

### C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. The Director found that the Petitioner did not meet this prong, and her appellate submission does not include arguments or evidence addressing or challenging this finding. Regardless, as the Petitioner has not established that she is well positioned to advance her proposed endeavor as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

## III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

*Matter of U-A-K-U-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of U-A-K-U-*, ID# 1263736 (AAO June 5, 2018)